

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

MICROSOFT CORPORATION,
SAP AG, and SAP AMERICA, INC.,

Plaintiffs,

v.

DATATERN, INC.,

Defendant.

Consolidated Cases:

Civil Action No. 11-cv-02365-KBF

Civil Action No. 11-cv-02648-KBF

**DECLARATION OF JOHN CARUSO IN SUPPORT OF OPPOSITION OF
DATATERN, INC. TO SAP'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, John A. Caruso, declare as follows:

1. I am the Chief Executive Officer of DataTern, Inc., and I base this declaration on my personal knowledge.

2. DataTern owns U.S. Pat. Nos. 5,937,402 ("the '402 patent") and 6,101,502 ("the '502 patent"). DataTern has sought to enforce its patent rights against a number of alleged infringers and, to that end, has had to file several lawsuits in the Eastern District of Texas ("Texas Litigation").

3. In order to facilitate settlement discussions with certain defendants in the Texas Litigation, DataTern generated drafts of illustrative claim charts, specifying that they be used for the purposes of negotiations, subject to Fed. R. Evid. 408, and otherwise treated as confidential. These draft illustrative claim charts were not generated for the purpose of prosecuting DataTern's specific claims in the Texas Litigation or to exhaust DataTern's claims of infringement of the '402 and '502 patents. Moreover, the draft illustrative claim charts were not

intended to be used as evidence to support allegations of direct infringement against Microsoft or SAP.

4. The illustrative claim charts used by DataTern in these settlement negotiations are the same documents that SAP purports to offer as evidence in support of its Motion for Partial Summary Judgment, attached as Exhibits A, B, D and E to the Declaration of Jeb B. Oblak in Support of SAP AG's And SAP America, Inc.'s Motion for Partial Summary Judgment ("Oblak Declaration").

5. To my knowledge, neither Microsoft nor SAP has participated in any of DataTern's discussions with the Texas defendants, including licensing or settlement discussions.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 10th DAY OF MAY 2012.



John A. Caruso